A

DEFENCE

OF THE

MINORITY.

[Price One Shilling.]

A

DEFENCE

OF THE

MINORITY

IN THE

HOUSE of COMMONS,

ON THE

QUESTION

RELATING TO

GENERAL WARRANTS.

LONDON:

Printed for J. ALMON, oppoſite *Burlington-Houſe*, in *Piccadilly*. 1764.

A

DEFENCE

OF THE

MINORITY

IN THE

HOUSE of COMMONS, &c.

AFTER the many Arts employed, and the occaſional Writings lately publiſhed, and diligently circulated, to eſtabliſh an Opinion favourable to the Views of the Miniſtry, upon the Motion made and rejected in the laſt Seſſion of Parliament, for declaring the Illegality of certain general Warrants, iſſued by Lord *Halifax*; it will probably

not be thought extraordinary, that there ſhould be found *one* Man in this Kingdom, who, from his Attachment to the Reputation and Merit of the 220 Members of the Minority of that Day, ſo groſſly injured in theſe Writings, is unwilling to acquieſce in Silence under ſo general and wilful a Miſrepreſentation, both of the Subject itſelf and of Their Conduct.

One of theſe Writers, who ſeems to bear ſome Marks of Authority, begins His Work * with this Obſervation : " That it is not ſingular, that ſome of the Conſtituents of the Members of the Minority ſhould not be perfectly acquainted with the Motives to the Queſtion, which was this Year brought into the Houſe, conſidering their Diſtance from the Scene of Action, and the Diligence uſed in the Miſrepreſentation of Facts." He next accuſes ſome particular Members of Ignorance or Inſincerity, for having declared in their Anſwers to the Addreſs of Thanks from their Conſtituents ; " That They were defending the undoubted and undiſputed Birth-right of the Subject," and then ſtates the Mo-

* A Letter firſt publiſhed in the *Gazetteer* of *May* 23, and lately reprinted with the *Wallet*.

tion

tion lately made in the Houſe of Commons to have been this, " Whether a general Warrant from a Secretary of State be warrantable by Law or not."

Now if it ſhould happen to be true, (and I undertake to ſhew it) that *no ſuch Motion* was made in the Houſe of Commons, and that this *favourite Proclamation* of the Miniſtry is, in every Fact, Inference and Argument, falſe as applied to Things, and unjuſt as applied to Perſons; it will then indeed not be thought extraordinary, that *Conſtituents at a Diſtance ſhould be ſometimes miſled by Diligence in the Miſrepreſentation of Facts.* It will be clearly diſcerned, upon what Grounds theſe Writers have proceeded to charge others with Ignorance and wilful Fallacy, for differing from Them upon a great national Queſtion, the Terms of which They have not yet learnt, and the Meaning of which They have not comprehended; and conſequently how far They are Themſelves in the Predicament, either of Thoſe, whom They contemn for Ignorance, or of Thoſe, whom They accuſe of Falſhood.

It is become incumbent upon me to demonſtrate the Truth of this Aſſertion, unleſs I would be ranked in the ſame Claſs of confident Writers: Nevertheleſs I enter upon the Proof with no other Apprehenſion, than what the Difficulty of the Subject naturally creates; where ſo many Proceedings in Parliament and Judicature are to be ſtated, and where every Step, the Motives of every Meaſure, and the Conſequences, are to be explained with ſome Preciſion, both in Argument and Language.

In the firſt Place then I am to ſhew, that the Motion, ſtated in the Letter to the Leaders of the Minority, never was made in the Houſe of Commons: to prove which, I need only tranſcribe from the Votes the Motion made on the 14th of *February*, which was, "That a general Warrant for apprehending and ſeizing the Authors, Printers and Publiſhers of a ſeditious Libel, together with their Papers, is not warranted by Law."

It is obvious to every Body, how far this Queſtion differs from that ſtated by the Author, not in form but in ſubſtance.

His

His Queſtion is general; it extends to all Caſes of Emergency, in the inſtant of any ſuppoſed public Danger or Confuſion; and the Determination of it in the negative would preclude the uſe of general Warrants iſſued by Secretaries of State, in every *extreme* Caſe, which Imagination can put, or which Neceſſity would juſtify. Whereas the Queſtion, actually moved in the Houſe, confines itſelf to general Warrants iſſued *in the Caſe of a ſeditious Libel*; it is preciſe; it decides not upon the Exerciſe of the ſame Power in Caſes not included; it was formed thus to avoid the very Objections now made to the Queſtion as ſtated by the Author, and perhaps has ſince been miſrepreſented in the Political Writings of theſe Times, merely for the Opportunity of making ſuch Objections. There is ſo eſſential a Difference between theſe two Queſtions, that it is evident, a thinking and an honeſt Man might very fairly and conſiſtently have voted *for* the one, and *againſt* the other. For example, in the Caſe of High Treaſon, I may think it juſtifiable in Conſideration of the *public Danger*, the *nature of the Offence*, the *Neceſſity of Secrecy and Diſpatch in preventing ſuch Conſpiracies againſt the public Weal*, to *connive* at the

uſe

uſe of general Warrants of Apprehenſion; but in the Caſe of a Libel already publiſhed, where the Miſchief is done, where the Degree of public Danger is comparatively ſo ſmall, and the Offence itſelf, to the reproach of our Laws, ſo very vague and undefined, I may, and do, think, that ſuch an *unlimited* Power, over the Perſons and Goods of all Subjects, is neither neceſſary nor expedient to be lodged in any Hands. The Minority ſaw this Diſtinction. They adopted it. They conformed their Queſtion to it. So far were They from making the Propoſition, which theſe Writers impute to Them, that They framed Their Motion upon the Caſe before Them; confined it to a ſeditious Libel; and had both too much Senſe and too ſincere a Regard for public Tranquillity to ſtir *captiouſly* ſo delicate a Queſtion of Government, as that which They are now, with ſo little Candor, charged with having actually agitated.

Having thus abſolutely miſunderſtood and miſ-ſtated the Queſtion, the ſame Author proceeds, as he ſays, " To evince the Truth of this Aſſertion, to place the Subject in a right Point of View, and to prove, that the Minority did not act from any ſuch

liberal

liberal Motive, as the Deſire of ſecuring the Perſon of the Subject, or his Papers, againſt illegal Seizures in ſuch Caſes."

To demonſtrate this, he ſets out with aſſuming, that the Lord Chief Juſtice of the Common Pleas had, in the Cauſe of *Wilkes* againſt *Wood*, determined the Seizure of Papers, under ſuch Warrant, in ſuch Caſes, to have been illegal. He then aſſumes, in the ſecond Place, That Bills of Exceptions preſented in Appeal from the Deciſion of the Chief Juſtice of the Common Pleas, upon the Legality of the Warrant, have *ever ſince* been actually depending before the whole Bench of Judges; and at laſt, being now in Poſſeſſion of the advantage Ground, to carry which He before aſſumed all theſe preliminary Points, He roundly aſſerts that, *in this Situation*, and Matters thus depending, it was the Duty of the Minority to have waited the Iſſue of that Appeal. We have ſeen ſome Inſtances of the Writer's Exactneſs in ſtating the Motion in Parliament; let us now enquire, if he is more accurate in his Detail of the Proceedings in the Court of Common Pleas.

In the firſt Place then I maintain, in Contradiction to theſe Aſſertions, that the Queſtion of the Legality of the Warrant is not *now* ſub judice, nor *has ever yet been in a Courſe of legal Determination*; to prove which I will ſtate fairly and preciſely the Riſe and Nature of the ſeveral Bills of Exceptions, either *actually tendered* or prepared, and then leave the Reader to determine by his own Judgment.

In the Action brought againſt the Meſſengers, by the Servants of the Printers a Bill of Exceptions was, I admit, tendered; but it ſhould be alſo remembered, that the only Queſtion depending upon that Bill is, *whether the Secretary of State be a Juſtice of the Peace* within the Equity of the Act of the 24th of *George* the Second; which is a Point very material in the Defence of the Meſſengers acting under Orders, but has no Connection with the Queſtion upon the Legality of the Warrant itſelf.*

In

* The Bill of Exceptions tendered in this Cauſe, after reciting the Pleadings, and ſtating the Evidence produced on the Part of the Defendants, goes on thus:

In the Action brought by *Wilkes* againſt *Wood*, after Mr. *Wood* had pleaded as the Meſſengers

thus : " Whereupon the ſaid Council for the aforeſaid Defendants, did then and there inſiſt before the Chief Juſtice aforeſaid, on the behalf of the Defendants abovenamed, that the ſaid ſeveral Matters ſo produced and given in Evidence on the Part of the ſaid Defendants as aforeſaid, were ſufficient and ought to be admitted and allowed as deciſive Evidence, to entitle the ſaid Defendants to the benefit of the Statute made in the Twenty-fourth Year of the Reign of his late Majeſty King *George* the Second, intituled, " An Act for rendering Juſtices of the Peace more ſafe in the Execution of their Office, and for indemnifying Conſtables and others acting in Obedience to their Warrants ; and, that therefore, the ſaid *William Huckell* ought to be barred of his aforeſaid Action, and the ſaid Defendants acquitted thereof, and thereupon, the ſaid Defendants by their Council aforeſaid, did then and there pray of the ſaid Chief Juſtice to admit and allow, the ſaid Matters and proof ſo produced and given in Evidence for the ſaid Defendants as aforeſaid, to be concluſive Evidence to entitle the ſaid Defendants to the benefit of the Statute aforeſaid, and to bar the ſaid *William* of his Action aforeſaid. But to this, the Council learned in the Law, on behalf of the ſaid *William Huckell*, did then and there inſiſt before the Chief Juſtice aforeſaid, that the Matters and Evidence aforeſaid, ſo produced and proved on the Part of the ſaid Defendants as aforeſaid, were not ſufficient nor ought to be admitted

Meſſengers had done in the former Caſe, and reſted his whole Defence on the general

or allowed to intitle the ſaid Defendants to the benefit of the Statute aforeſaid, or to bar the ſaid *William Huckell* of his aforeſaid Action; and that neither the ſaid Defendants, or any of them, nor the ſaid Earl of *Halifax* were or was within the Words or Meaning of the Statute made in the Seventh Year of the Reign of his late Majeſty King *James* the Firſt, intituled, An Act for eaſe in Pleading againſt Troubleſome and Contentious Suits proſecuted againſt Juſtices of the Peace, Mayors, Conſtables, and certain other his Majeſty's Officers, for the lawful Execution of their Office; nor of the Statute made in the Twenty-firſt Year of the Reign of the ſame late King, intituled, An Act to enlarge and make perpetual the Act made for Eaſe in Pleading, againſt Troubleſome and Contentious Suits proſecuted againſt Juſtices of the Peace, Mayors, Conſtables, and certain other his Majeſty's Officers, for the lawful Execution of their Office, made in the Seventh Year of his Majeſty's moſt happy Reign; nor of the ſaid Statute made in the Twenty-fourth Year of the Reign of his late Majeſty King *George* the Second; nor in any ways intitled to the Benefit of any of thoſe Statutes. And the Council for the ſaid *William Huckell* further inſiſted, that the Seizure and Impriſonment of the ſaid *William Huckell*, were not made or done in Obedience to the ſaid Warrant, nor had the ſaid Defendants, or any of them in that behalf, any Authority thereby: and the ſaid Chief Juſtice, did then and there declare and deliver his Opinion to the

Jury

neral Iſſue, and the Cauſe ſtood ready for Trial; the Court of Common Pleas was moved on the part of the Defendant, that He might be permitted to juſtify under the Warrant, *in order to bring the Matter fully and fairly before the Court*; which the Court after Conſideration, for *that Reaſon*, and *that only*, allowed. But when the Cauſe came to be tried, Mr. *Wood*, by the Advice of his Counſel, or Attorney, and to the Surpriſe of the Chief Juſtice, deſerted his Juſtification; declined the Opportunity which the Court had indulged him with, of bringing the Validity of the Warrant into Debate; and reſorted to the old Objection, namely, that the Secretary of State was a Juſtice of the Peace, and therefore ought to have been made a Party Defendant in the Suit. In conſequence of which, the

Jury aforeſaid, that the ſaid ſeveral Matters ſo produced and proved on the Part of the ſaid Defendants, were not upon the whole Caſe, ſufficient to bar the ſaid *William Huckell* of his aforeſaid Action againſt them, and with that Opinion left the ſame to the ſaid Jury; and the Jury aforeſaid, then and there gave their Verdict for the ſaid *William Huckell*, and Three Hundred Pounds Damages: Whereupon the ſaid Counſel for the ſaid Defendants, did then and there on the behalf of the ſaid Defendants, except to the aforeſaid Opinion of the ſaid Chief Juſtice."

the Bill of Exceptions offered in this, as in the former Action, turned only upon the *ſame ſingle Point*, and the Queſtion of the Legality of the Warrant was *a ſecond Time avoided.**

In

* The Bill of Exceptions in this Cauſe, recites the ſpecial Juſtification, and in that Reſpect differs from the former; but the Concluſion, which is the material Part of the Bill is ſubſtantially the ſame: "Whereupon the ſaid Council for the ſaid *Robert Wood*, having proved the ſeveral Matters aforeſaid, did then on behalf of the ſaid *Robert*, alledge and inſiſt before the Chief Juſtice abovenamed, that the ſaid ſeveral Matters ſo produced and given in Evidence on the part of the ſaid *Robert Wood*, were ſufficient and ought to be admitted and allowed as deciſive Evidence, to entitle the ſaid *Robert Wood* to the benefit of the Statute, made in the Seventh Year of the Reign of King *James* the Firſt, intituled, An Act for eaſe in Pleading againſt troubleſome and contentious Suits proſecuted againſt Juſtices of the Peace, Mayors, Conſtables, and certain other his Majeſty's Officers, for the lawful Execution of their Offices: And alſo, to the benefit of the Statute made in the Twenty-firſt Year of the Reign of the ſame King *James* the Firſt, intituled, An Act to enlarge and make perpetual the Act, made for Eaſe in Pleading againſt troubleſome Suits, proſecuted againſt Juſtices of the Peace, Mayors, Conſtables, and certain other his Majeſty's Officers, for the lawful Execution of their Office, made in the

Seventh

In the Cauſe, in which *Leach* the Printer was Plaintiff, the Meſſengers pleaded *the general Iſſue*, and, at the ſame time, a *ſpecial Juſtification*, *ſtating the Warrant of Lord* Halifax, and the Acts which they had done to have been *in Obedience to, and in the Execution of that Warrant*. At the Trial, they entered at large into the Proof of the Facts alleged in *their ſpecial Juſtification*, which led the Chief Juſtice, in ſtating the Evidence to the Jury, to declare it as his clear Opinion, that if the Facts of the Juſtification *had been proved*, the Warrant, under

Seventh Year of his Majeſty's moſt happy Reign: And likewiſe, to the benefit of the Statute made in the Twenty-fourth Year of the Reign of our late Sovereign Lord King *George* the Second, intituled, An Act for rendering Juſtices of the Peace more ſafe in the Execution of their Office, and for indemnifying Conſtables and others acting in Obedience to their Warrants; and therefore, that the ſaid *John Wilkes*, ought to be barred and precluded from his aforeſaid Action, and the ſaid *Robert Wood* acquitted thereof. And thereupon, the ſaid *Robert Wood*, by his Council aforeſaid, then prayed of the ſaid Chief Juſtice, to admit and allow the ſaid ſeveral Matters and Proofs ſo produced and given in Evidence for the ſaid *Robert Wood* as aforeſaid, to be ſufficient and competent Evidence, to entitle the ſaid *Robert*, to the benefit of the ſaid ſeveral Statutes, and to bar and preclude the ſaid *John Wilkes* from his Action aforeſaid."

under which the Meſſengers had acted and juſtified, was illegal. But as the Jury, by Their Verdict, were of Opinion, that the Defendants *had failed in their Proof*, no Bill of Exceptions could lie upon the Queſtion of the Validity of the Warrant, as no Facts were found by the Jury, upon which the Law could ariſe, or the Exceptions be ſupported. *

After

* The Bill of Exceptions in *Leach's* Caſe, recites the ſpecial Juſtification of the Meſſengers, and the Evidence produced by them in ſupport of it. But the Point put in Iſſue by the Concluſion of it, is the ſame without the leaſt Difference, as in the former Bills of Exceptions: "Whereupon the ſaid Council for the ſaid Defendants, did then and there inſiſt before the Chief Juſtice aforeſaid, on the behalf of the Defendants abovenamed, that the ſaid ſeveral Matters ſo produced and given in Evidence, on the Part of the ſaid Defendants as aforeſaid, were ſufficient, and ought to be admitted and allowed as deciſive Evidence, to entitle the ſaid Defendants to the benefit of the Statute, made in the Twenty fourth Year of the Reign of his late Majeſty King *George* the Second, intituled, An Act for rendering Juſtices of the Peace, more ſafe in the Execution of their Office, and for indemnfying Conſtables and others acting in Obedience to their Warrants; and that therefore, the ſaid *Dryden Leach*, ought to be barred of his aforeſaid Action, and the ſaid Defendants acquitted thereof;

After this Repreſentation of the Proceedings in theſe Three Trials, which, we perſuade ourſelves, will be found to be candid and exact, upon comparing it with the Bills of Exceptions inſerted in the Notes, it will probably be admitted, that the only Queſtion now in legal Iſſue, or that can be brought before the Court, upon theſe ſeveral Bills of Exceptions, is whether aSecretary of State be a Juſtice of Peace.

But it may be aſked, Will not this great Queſtion be brought to Iſſue in the Cauſe now depending between Mr. *Wilkes* and Lord *Halifax ?*

That it may is *certain*, that it will, I think, is *doubtful*. Who knows how much longer a farther Uſe of the Advantages of Privilege on one Side and Diſtreſs on the other may continue to retard the Courſe of this

thereof; and thereupon the ſaid Defendants by their Council aforeſaid, did then and there pray of the ſaid Chief Juſtice, to admit and allow the ſaid Matters and Proof ſo produced and given in Evidence, for the ſaid Defendants as aforeſaid, to be concluſive Evidence, to entitle the ſaid Defendants to the benefit of the Statute aforeſaid, and to bar the ſaid *Dryden Leach* of his Action aforeſaid."

this Trial*. And is ſuch a Contingency as this to be cited in Proof of a poſitive Aſſertion, that the Queſtion itſelf was *actually in Iſſue*, when the Motion was depending in the Houſe of Commons? Will any Man have the Aſſurance to argue, that the Houſe of Commons could not, conſiſtently with their Duty or Dignity, have refuſed to acquieſce under ſuch an unconſtitutional and illegal Exerciſe of an uncontroled

* *Wilkes*, Eſq; againſt the Earl of *Halifax* and the three Meſſengers who executed the general Warrant } Original was ſued out, teſted the firſt of *June* and returnable from the Day of the Holy Trinity in three Weeks (19th of *June*, 1763); and the Earl being ſummoned caſt an Eſſoign, which was adjourned until the 18th of *November*.—Then comes in Privilege; which being at an End and all the Eſſoigns expired, a Diſtringas was taken out, teſted the 9th of May, being the firſt Day of *Eaſter* Term, 1764, returnable from the Day of *Eaſter* in five Weeks (27th of May);—the Sheriff returns Forty Shillings Iſſues——The Earl does not appear—The Court directs Fifty Pounds Iſſues——An alias Diſtringas is taken out, teſted the 30th of May, and returnable on the Morrow of the Holy Trinity (18th of *June*);—theSheriff returns his Iſſues.—TheEarl ſtill refuſes to appear—The Court orders Five Hundred Pounds Iſſues--A Pluries Diſtringas is taken out, teſted the firſt Day of Trinity Term (the 22d of *June*) and returnable in three Weeks of the Holy Trinity (the 8th of *July*);—The Earl has not even yet appeared.

troled Power *in Office*, grounded on no ſound Principles or Authorities of Law, made requiſite by no Neceſſities of State, incompatible with perſonal Freedom, and *frequently condemned by former Parliaments*, upon the diſtant and precarious Suggeſtion, that it was poſſible, that *in ſome future Action*, to be poſtponed in ſome Degree *at the Will of the Party accuſed*, this great national Point might come to Iſſue? Yet thus do the Advocates of the preſent Miniſtry, and the Defenders of this Queſtion humiliate the two Houſes of Parliament; not only to encreaſe the Power of the Crown, (that might carry ſome Air of Principle and Syſtem with it) but to cover the Error of a Miniſter, infringing the Rights of the Subject in the moſt eſſential Article of Liberty, upon the Authority and Example of *ſecret* and *unadjudged* Precedents in the *modern* Practice of a *modern* Office; ſeeking Refuge in the Courts of Law from the Interpoſition and Reſentment of Parliament, and yet to the utmoſt retarding the Iſſue of that very Appeal to Judicature, upon the full and public Aſſurances of which the Majority of the Houſe of Commons were perſuaded to leave this great Queſtion in Reference.

Under the former Head we have proved, that the Queſtion moved in the Houſe of Commons has been miſ-ſtated: Under this, we have ſhewn, that the Proceedings of the Court of Common Pleas have not been leſs miſrepreſented: That there is no Authority for the Aſſertion ſo confidently publiſhed, that Bills of Exception have been *actually tendered upon the Queſtion of the Legality of the Warrant*; and that the Court of Common Pleas, at this very inſtant, (many Months after it was reſolved, that the Houſe ought not to take Cognizance of the Queſtion, upon the ſingle Conſideration and Aſſurance, that it would have a ſpeedy Hearing and Determination at Law,) finds itſelf under the Neceſſity of reverting to the ancient Statute Law, in Preference to modern Practice, in order to give a *real* Force to its Iſſues for compelling Lord *Halifax* to ſuch an Appearance, as will bring the Matter to Deciſion.

But, it ſeems, whatever was the apparent Conduct of the Minority, They could not be ſincere; becauſe, after loſing This Queſtion, They refuſed a Bill moved by Sir *John Philipps*, to *regulate the Practice*

of

of Secretaries of State in iſſuing Warrants; which Bill, it is alleged, the Leaders of the Minority oppoſed, and, upon the Evidence of that Oppoſition, they are now arraigned for Inſincerity. Here too the ſame Writers are unfortunate, and again led into another falſe Triumph by their original Ignorance of the Queſtion moved in the Houſe of Commons. They would otherwiſe have recollected, that the Minority held the "general Warrant for apprehending and ſeizing the Authors, Printers and Publiſhers of a ſeditious Libel, together with their Papers, to be Illegal," and from thence have ſeen, how little They could vote for a Bill *to regulate*, what They did not admit to be legal.

Can it be ſeriouſly believed, that Sir *John Philipps* or the Miniſtry expected to be ſupported by them in bringing in a Bill to regulate, what They had aſſerted neither did nor ought to exiſt? No: They could have no Right to ſuppoſe the Minority would not adhere to their declared Opinion; and they muſt have recollected, that if They acted uniformly, They would neceſſarily confine Themſelves to the *ſingle Caſe* before Them. By what other Con-

duct could they have hoped to execute the Plan upon which They profeſſed to act? To provide at once for private Liberty and public Safety; by condemning the wanton Uſe of an *uſurped* Power, in the Inſtance under Conſideration, which, in their Judgment, had no Circumſtances to juſtify it; and by leaving uncenſured, the Uſe *even of illegal* Warrants *in thoſe extreme Caſes*, which it is impoſſible to deſcribe and diſtinguiſh before they happen; but which the wiſeſt Legiſlators of all Times, and the Framers of the Law of *England* in particular, have ever thought it moſt expedient and ſafe to conſider as Deviations from the general Law; to be made at the peril of the Perſons acting, and to be explained in the Exception, and defended in the Exerciſe, by the Allegation and Proof of thoſe extraordinary Circumſtances, which the Minority argued might juſtify, but ought always to accompany ſuch Caſes. They alleged that extraordinary Proviſions might elſe be extended to *all* Times, and an Authority, granted reluctantly even in the Minute of *imminent Danger*, might, in ſecure Peace, be made deſtructive to Freedom.

This

This Method of Reaſoning is the more concluſive, becauſe no Danger can follow to the Servants of the Crown from leaving the Law upon this Footing; for ſhould a Secretary of State, upon Intelligence of any Crime, really formidable to the Commonwealth, and of a Nature requiring Diſpatch and Secrecy, be under a Neceſſity of iſſuing ſuch a Warrant as is now complained of; and ſhould His Meſſengers, in purſuit of the Offenders, take up an innocent Man; is it reaſonable to ſuppoſe, that any Jury would be found ſo narrow in Their Notions of Government, as not to attend to a Diſtinction clearly made and well ſupported upon the peculiar Circumſtances of ſuch a Criſis? Or ſhould Prejudice or Ignorance influence the Determination of Juries, would not the Officers thus ſuffering for the Public be relieved by the Interpoſition of Parliament?

Let us recollect, what has paſſed in the Matter now depending. The Warrant itſelf has been generally held illegal. The offence againſt the State was no higher than publiſhing a Libel: No Circumſtances to make a general Warrant neceſſary in the Method of apprehending the Author: The Pro-

Proceedings in the Execution of it aggravated by every Circumſtance of Wantonneſs, Negligence and Oppreſſion: and nevertheleſs, it has not yet incurred the Cenſure of Parliament. Where then would be the Difficulty of Defence, *in a Caſe* which *had* Circumſtances of *real* Juſtification to allege, or in which a Warrant, not ſtrictly legal, could be ſhewn *to have been neceſſary*, or the Danger imminent? Thus many in the Minority reaſoned, and, thus reaſoning, They proved Themſelves the true and *temperate* Friends of Liberty, no leſs when They refuſed, by regulating this Power, to furniſh it with the Sanction of a Statute, than when They propoſed, by a declaratory Motion, grounded in the Circumſtances of a Tranſaction before Them, to confirm, as far as the Reſolution of one Houſe would go, the common Law of the Land; leaving the Uſe of Warrants, which, in the Caſe before Them, had no Juſtification, but were ſuppoſed to be poſſibly neceſſary in other Caſes, at preſent by Them neither condemned nor juſtified, to be hereafter cenſured or excuſed, as the ſame Law ſhould decide, and ſuch Caſes ſhould require. But in one part of this Praiſe, let not the Miniſtry be deprived of Their juſt Share; for no real Deſign of paſſing

paſſing the Bill appeared amongſt Them; Sir *John Philipps* himſelf opening curſorily the Regulations of this Bill, had the ill Fortune to make little Impreſſion upon the Body even of the Majority of the Houſe, and the whole Conduct of the Day fully demonſtrated, that it was thought, even by that Majority, to be a doubtful Propoſition, reſulting more from a Senſe of Shame, than any ſerious or concerted Plan of either vindicating the Law or eſtabliſhing the ancient hereditary Right of the Subject againſt future ſimilar Oppreſſion.

Another Reaſon alleged to prove the Minority not ſincere in their Wiſhes to ſecure the Freedom of the Subject, is drawn from Their Proceeding *by Motion* in the Houſe of Commons. But it is difficult to comprehend the Force of this ſingular Objection. Perhaps theſe Writers do not know, that nothing is more uſual or regular, in both Houſes of Parliament, than to take up important Matters of public Adminiſtration ſeparately in either Houſe; to expreſs the Senſe of that Houſe by a general Reſolution, and, upon that Reſolution, to bring in a Bill. If this be real Ignorance of the Subject, and not contrived to miſlead the Public upon

upon ſo national a Queſtion, "*by Hardineſs in propagating falſe Facts*," by ſubſtituting a Motion never made, in the Place of a Motion moved in the Houſe of Commons, by ſacrificing the Characters of the Minority, the fair Report of the Proceedings of the Commons of *England*, and Truth itſelf, to Their own vain and impracticable Hope of vindicating an embarraſſed, and, *in that Day*, vanquiſhed Adminiſtration; perhaps they will forgive a Stranger, if he ſhould for Their Satisfaction, and for clearing this Part of the Argument, favour Them with ſome, out of many, Inſtances of this Method of Proceeding, and ſupply Them with that Knowledge Their Friends have ſo unfairly concealed.

They have forgot to apprize Them of the Caſe of Lord Chief Juſtice *Keeling* in the Reign of *Charles* the Second, * when, *upon the Information of a private Member of the Houſe*, of illegal Acts committed by the Chief Juſtice in the Treatment of Juries, the Houſe ordered him to attend at the Bar, and find-

* Commons Journals, 13 December 1667. A. Gray's Debates.

finding the Chief Juſtice, defending himſelf by Precedents, the Practice of the Courts, and the Opinion of the Judges, They accepted thoſe Authorities *in excuſe of the Judge, whom They accordingly diſcharged*, but They came to the following Reſolution, " Reſolved, that the Precedents and Practice of fining Juries is illegal."

It may not be improper to obſerve that, in this Caſe, the Commons proceeded upon the Information of a private Member of the Houſe, ſtating a public Grievance: That They proceeded *by Reſolution*: That They decided againſt *Precedents* and *Practice* and the *Opinion of the Judges*: And that They thought it not inconſiſtent to condemn the *Thing* and *acquit* the *Perſon*.

They ſhould have been informed alſo, that in 1689 *, upon Complaint made to the Houſe of the Cuſtody of the Earl of *Danby*, by a Warrant iſſued by Secretary *Nottingham*, the Houſe calling for the Warrant, and finding that it bore Date *one Day before* the Information given, and receiving

* Commons Journals, 28 June 1689.

no ſatisfactory Anſwer upon the Point from the Secretary of State, reſolved, That the taking Lord *Danby*, *by that Warrant*, was illegal.

That in 1680 *, Chief Juſtice *Scroggs*, having iſſued ſeveral general Warrants, impowering *Officers* and *Their Aſſiſtants*, from Time to Time, to ſeize and take into Cuſtody *all Perſons*, whom they ſhall ſuſpect of writing and publiſhing ſeditious Libels, *&c.* the Commons, in this Inſtance, alſo interpoſed, and, by Reſolution, declared the ſaid Warrants to be *arbitrary* and *illegal*; and thereby taught that deſpotic and corrupt Judge, who, in his Age, perhaps affected *to regard the Reſolutions of either Houſe of Parliament no more than the Reſolutions of a Parcel of drunken Porters*, that the juſt Reſentment of Parliament, will, in all Caſes, ſooner or later, overtake the Enemies, and vindicate the Conſtitution of theſe Kingdoms.

More Inſtances, I am aſſured, of the ſame Kind might be urged in Juſtification

* Commons Journals, 23 December 1680.

of

of the Interpoſition of the Commons in Caſes of this Nature, of the Proceeding by Reſolution in the firſt Inſtance, and of the Motion for cenſuring the general Warrants, by a Declaration of their Illegality; but the Strength of Precedents turns not ſo much upon the Number, as upon the Application of them.

I Truſt the Caſes I have cited will be thought appoſite, if not each ſeparately to every Point, yet, in the whole and taken together, concluſive to every material Circumſtance in the Proceeding of the laſt Year; and therefore I will finiſh this Part of my Anſwer with remarking, that ſuch was the Opinion of the Houſe of Lords in 1640 *, of theſe general Warrants, ſuch *Their* Idea *then* of Their Juriſdiction, and ſuch Their Jealouſy *then* of Their perſonal Freedom, that, the Papers of two of their own Members having been ſeized, under one of theſe Warrants, They declared it a Breach of Privilege; the Officer executing it was brought upon his Knees

* Parliamentary Hiſtory, Vol. IX. P. 34, 35, 36, 37. Rapin, Vol. X. P. 420. Whitelock, P. 37.

at the Bar, and Satisfaction was made to the injured Lords *. In 1692, in the Caſe of Lord *Marlborough*, confined without legal Evidence, it was reſolved, that the Power exerciſed in *that* Caſe was *illegal*. And it was alſo reſolved, that the Reſolutions of the Houſe be entered in the Books, as a *ſtanding Direction to all future Judges*, and to cut off all Excuſe for any ſuch Illegalities in Times to come †. And let it not be forgot, that the Commons, in the ſame Year, rejected a Bill ſent down to them by the Lords, and grounded upon the Caſe of Lord *Marlborough*, "for indemnifying Secretaries of State for ſuch Commitments in *treaſonable* Caſes, and to limit Their Powers by Law;" the Houſe of Commons *then* reaſoning, and prudently acting, upon the

* It appears from *Rapin*, *Whitelock*, and others, that the Pockets and Studies of theſe Lords were ſearched upon the Suſpicion of holding Correſpondence with the *Scots*, then actually in Arms, and that their Perſons were not taken into Cuſtody, even upon this Charge, and in thoſe Times; and the whole Proceedings of the Lords in Reſentment of this, which they *then* held to be a Breach of their Privilege, are related at large in the Parliamentary Hiſtory.

† Lords Journals, 14 *Nov.* 1692.

ſame

ſame Principles, and with the *ſame Diſcretion*, which are in *theſe* Times *reſented* and *condemned* in the late Minority, following the Example of Their Anceſtors in a Caſe very ſimilar †.

It is not unpleaſant to obſerve, how earneſtly the Writers upon this Subject labour to make the *Caſe* of Mr. *Wilkes* paſs for the *Cauſe* of Oppoſition, and to repreſent Him not only as the Idol, but as the Object of the Minority in the Stand They made upon this very Queſtion. Yet if I may be allowed to make a Remark upon the Wiſdom of this Plan, I think it is rather deficient. The Kingdom has been tried upon this Topic, and the Art has failed: The Man-

† The Debate went off in a Bill, that *indemnified* the Miniſtry for thoſe Commitments, *but limited them* for the future by ſeveral Rules; all which Rules were rejected by the Commons. They thought thoſe Limitations gave a *legal* Power to commit, in Caſes where they were obſerved; whereas they thought the ſafer way was to *indemnify the Miniſtry*, when it was viſible they did not commit any but upon a real Danger, and not to ſet them *any Rules*: Since as to the committing of ſuſpected Perſons, *where the Danger is real and viſible*, the public Safety muſt be firſt looked to, and ſuperſede all particular Laws. Burnet, Vol. 2. P. 103.

ner

ner of the Expulſion, the Conduct of Numbers now in the Minority, uniformly kept throughout that Enquiry, and the Evidence of Time, all confute the Calumny; inſomuch that one ſhould think the Miniſters Themſelves would adviſe theſe Writers another Time not to hang upon a Topic, which They have long ago called in, and at firſt perhaps urged ſo warmly, more from an officious, and, I am confident, a vain Hope of ſoothing the Mind of one Man, by an Attack upon his neareſt Relations, than with any ſerious Expectation of being able to make the late Minority paſs, either in this Age or in the Judgment of Poſterity, for the factious Suite of any Man: A Minority compoſed (as it certainly was upon that Day) of Men, whoſe Anceſtors, in their Times, and of others, who, in their own Perſons, have moſt eminently contributed to the defence of this Conſtitution and Country, againſt foreign and domeſtic Enemies, from the Revolution to this Hour.

I have now gone through the ſeveral Aſſertions of theſe injudicious Advocates, who, guided by an Intemperance ſimilar to that, which lately urged Their Patrons to adviſe the Diſmiſſion of General *Conway*, have, in this

this Inſtance, as Their Patrons did in the other, revived a juſt and general Diſcontent, which might elſe, probably, have ſubſided in this inconſtant Country.

Yet to conclude here, would not be adequate to the Cauſe; nor indeed would it be juſtice to the Perſons injured. The ſame Public, which has ſeen the 220 calumniated Members of the late Minority charged with ſo many Things, which They never did, and with Deſigns, which they never formed, ſhould now be fully and fairly informed of Their *actual* Conduct, and Their *real* Views, in moving the Queſtion of the Legality of the Warrants.

Let Thoſe then learn, if there be any yet ſenſible to the Feelings, and open to the Call of national Liberty, that it appearing, in the Courſe of the Proceedings againſt *Wilkes*, that a Subject had been taken into Cuſtody by a general Warrant of Apprehenſion, iſſued by Lord *Halifax*, his Papers ſeized, and his Perſon kept in cloſeſt Cuſtody, *upon the Charge of a ſeditious Libel*, the Public inſtantly took the Alarm, and the Illegality of *ſuch* Warrants, and *ſuch* Cuſtody, in *ſuch* an Offence, became univerſally the Topic

of

of Diſcourſe, and Ground of Apprehenſion and Complaint. When therefore the Proceedings againſt Mr. *Wilkes* were finiſhed, *when the Honour of the Crown and the Dignity of Parliament, traduced and injured* by the licentious Paper complained of, were both *vindicated* and ſatisfied, and not till after the Expulſion; two Gentlemen of diſtinguiſhed Worth, Talents and Conſequence in Their Country, ſtepped forth; expreſſed their Opinion of the Illegality of the Proceedings of Lord *Halifax*, and took that Method, which to Them ſeemed the beſt, of bringing the great Queſtion, which had ſo much intereſted the Minds of all Ranks of Men, and upon which, They alleged, They thought the Eſſence of private and perſonal Liberty depended, to an amicable Debate and candid Diſcuſſion, for the Satisfaction of this Age, and, as They truſted, for the Security of future Times.

The Houſe adopted the Idea: The Adminiſtration acquieſced; a Day was named; the Miniſtry called for various Papers, and Volumes of Records; and when the Hour of Debate came on, Sir *William Meredith* moved the following Queſtion.

" That a general Warrant for apprehending

ing and ſeizing the Authors, Printers and Publiſhers of a ſeditious Libel, together with Their Papers, is not warranted by Law."

It is ſaid, and univerſally believed, that in the Debate neither the Miniſter himſelf, nor the Attorney General defended the Legality of the Warrant. The M. of *G.* and many others who voted for adjourning the Debate, expreſly declared Their deteſtation of the Practice, and Their Senſe of the Neceſſity of preventing a Meaſure ſo dangerous to Liberty; and the whole Defence of that Day conſiſted in arguing upon the Impropriety of deciding in Parliament a Queſtion then depending in a Court of Judicature. They, who maintained the Propriety and Neceſſity of the Motion, endeavoured to ſhew the Fallacy of this reaſoning, and dwelt upon the Importance of the Queſtion, the Violence of the Proceeding, the Power of Parliament *exerciſed in ſimilar Caſes*, and the Reproach of leaving the Liberty of the Subject, in a Caſe of ſuch Notoriety, ſuſpended by a Court of Law, upon the Pretence of Bills of Exceptions, *which, when examined, would be found to turn upon other Points*, and where the De-

ciſion, in this Matter of univerſal Intereſt, might be long kept in ſuſpence, at the will even of the very Party accuſed. Upon a Motion being made for adjourning the Debate for four Months, the Numbers were found to be 234 for the Queſtion and 220 againſt it; by which this great conſtitutional Queſtion, perhaps the moſt important that ever animated the Spirit of a free People, has been put, as it is now phraſed, into a *due* courſe of Trial at Law; in conſequence of which *candid Reference* every Method has been taken, to delay the Suit and to avoid Deciſion. Some ſeem to think it not impoſſible, that the Cauſe may be thus put off till the next Seſſion, in which Caſe I am free to declare, I think the Miniority of 220 will deſerve every Calumny, which They have hitherto undeſervedly borne, if They do not make this great Queſtion the very firſt Meaſure of the Year; hopeleſs, as the Public would then be, of any Redreſs or Deciſion, from the Candor of the Miniſter, or from the courſe of Law.

Thus this great Queſtion took its riſe, thus the Minority moved it, the Miniſtry avoided it, the Houſe referred it, the Ser-

vants

vants of the Crown have profecuted it in the Courts below, and in this Situation our moſt eſſential Liberty, our undoubted Birth-right, *ſtands*, I beg Pardon, *hangs* at this Hour. For at this inſtant of Time, Lord *Halifax* from a Perſeverance (*which ſome would celebrate for true Spirit*) may iſſue out another general Warrant, upon the Pretence of *the laſt Libel the Budget*; by that Warrant he may order, as he before did, ſix Meſſengers, his official Inſtruments, without Knowledge to guide, or Property to reſtrain Them, in the abuſe of unlimited Power, to enquire for the Author of that ſeditious Work alſo, and to ſeize on any Perſon, *whom They may think proper*, and His Papers; and what Law remains in *allowed* Force *at this inſtant* to deter Them from ſeizing, upon the ground of received Opinion, the Perſon of that Honourable Gentleman, whom ſome People allege They know, and many believe, to have been, in part at leaſt, the Author of that excellent and unanſwered Work? from entering *His* Houſe abruptly, alarming *His* Family, keeping Him in cloſe Cuſtody; tumbling His moſt ſecret and confidential Papers and Deeds careleſsly *into a Sack*, as in the former Inſtances, and truſting them to the Hand of a common and unreſponſible Perſon, without Schedule or

Security

Security for recovery of them? In this Caſe it is true, the Outcry would be great and general, from the Character of the Perſon thus treated; His ancient Family; His *extenſive*, though concealed *Generoſity*, and his Popularity in that large, manufacturing, and wealthy County, which He repreſents with ſuch entire Satisfaction to His Conſtituents, and ſo much Reputation to Himſelf. But, on the other Hand, what would not Lord *Halifax* have to ſay in His Defence? It would now be alleged in His Favour, not only that there are numberleſs Precedents upon the File of Office, in Juſtification of this Practice, and that, if it be not legal by the written Letter of the Statute Law, it is Law grown out of long uſage, "but *that the Houſe of Commons*, in the *very laſt* Winter, thought it ſo neceſſary a Power in Magiſtracy, that they refuſed to condemn or to abrogate it." It would be confidently aſked, "whether their Acquieſcence in the Exerciſe of it, upon an *expreſs Motion*, and after *long Debate*, does not prove, that they thought the Power itſelf neither illegal nor dangerous? Whether, after this Sanction given to it by the Indeciſion and Reference of the Houſe of Commons, it is not to be conſidered as Law, until the Courts of Judicature have pronounced it is not? It is the

Duty

Duty of Magiſtrates fully to exert whatever Authority is veſted in them, for the *Neglect* of which They are accountable, as well as for the Abuſe: And, however Lord *Halifax* might have heſitated upon the Legality of general Warrants *before the Queſtion came under Conſideration of the Commons* laſt Year, *from his own Doubts of the Validity of Precedents of Office*, to *conſtitute Law againſt the Temper of the Conſtitution and the Freedom of the Subject*; yet *at this Time*, a Secretary of State ſtands *obliged* to conſider this Practice of Office as authoriſed by the Conſent and Sanction of the two Houſes of Parliament given to the Continuance of it, until it ſhall be annihilated judicially." This would certainly be his Vindication, and, I think, a very plauſible, if not a ſufficient one. Beſide, the Rank of the Perſon makes no Difference in the Outrage, though it would in the public Reception of it. The Law is no Reſpector of Perſons; the Libel of a Man of Parts, of Rank and Eſteem, is more dangerous, than that of an inferior; the ſame Reaſoning and the ſame Precedents, that juſtified one, muſt be admitted in Juſtification of the other; and *this* may be done upon every Reaſon, upon which *that* was done, as the Law now ſtands, and ſuſpended as the De-

tmination

termination is now unhappily left. To prevent this Uncertainty in ſo fundamental an Article of our Conſtitution, in which, in their Judgment, *to be in Doubt* is to be *in Danger*, the 220 calumniated Members of the Minority honourably, tho' ineffectually contended. And let the impartial Public now decide, whether they are moſt indebted to thoſe, who laboured to bring this Their great Intereſt to an immediate Determination, or to the 234 Members of the Majority of that Day, who prevailed in having it referred to a future Trial at Law: A method of Deciſion, which, it ſeems neither the Importance of the Queſtion, nor the Recollection of the moſt ſolemn Aſſurances, given in full Senate, nor the utmoſt Endeavours of the Party injured, nor the ordinary Juriſdiction of the Court of Common Pleas, nor the Authority of the illuſtrious and truly Patriot Judge preſiding in that Court, have, as yet, been ſufficient to bring on.

F I N I S.